HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.19973 OF 2007

Between:

The Government of Andhra Pradesh,
Rep., by its Secretary, Social Welfare
Department, Secretariat Buildings,
Hyderabad and another.

…Petitioners

AND

Sri S. Vijayapal

...Respondent

: O R D E R :

Counsel for the petitioner : Government Pleader for Services - II

September 20, 2007

Per G.S.SINGHVI, C.J.

Whether the departmental enquiry instituted against the respondent vide charge memo dated 10-5-2002 in relation to the allegation of supervisory negligence during the period when he remained posted as Assistant Social Welfare Officer, Chityal could be quashed on the ground of delay in its initiation is the question which arises for determination in this petition filed by the Government of Andhra Pradesh and another against order dated 30-6-2006 passed by Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') in O.A.No.3587 of 2004.

In the charge memo, which was subject matter of challenge before the Tribunal, the following allegation was levelled against the respondent:

"Sri S.Vijayapal, A.S.W.O. has not followed the instructions issued from time to time and failed to scrutinise the hostel bills and allowed the hostel bills passed exceeding the eligibility and ceiling prescribed and thus responsible for the drawal of excess amounts by the following Wardens/Matrons in his jurisdiction.

S. No.	Name of the hostel	Name of the Warden/Matron	Period worked From – To	Amount drawn Rs.	Purpose
1.	SWBH, Azamnagar	E. Rathnam	1-4-91 to 31-3-94	4,15,400	As detailed in the audit report and charge memo issued to the Warden.
(Basis: Procgs.No.B1/621/2000-1 (18) dt.22-7-2000)					
	Total			4,15,400	

Had the A.S.W.O. taken serious note of the irregularities committed by the Warden/Matron during her inspection, Government would have not sustained the loss to the exchequer.

Thus, Sri S.Vijayapal, Asst. Social Welfare Officer by his above mentioned note has exhibited lack of integrity, devotion to duty and conduct unbecoming of a member of service and thereby contravened Rule 3(1) of

A.P.C. Conduct Rules, 1964."

The imputation of misconduct, which constituted the foundation of the above reproduced allegation, was as under:

"That S. Vijayapal, while working as Asst. Social Welfare Officer, Warangal, during the period from 30-1-1993 to 31-3-1994 has failed to perform his duties and responsibilities issued vide Rc.No.C1/16104/84, dated 15-11-1984 of Commissioner of Social Welfare. As per the job chart prescribed in the above letter, the A.S.W.O. is responsible to collect all the bills from the hostels under his jurisdiction and scrutinise them with reference to the rules and send them to the Deputy Director (SW) for passing.

Apart from the above, he must check up the purchase made by the Wardens/Matrons and see whether they are in accordance with the authorizations given to them and the rates paid are as per the prevailing market rates."

The respondent filed reply dated 11-10-2002 and pointed out that he had worked as Assistant Social Welfare Officer, Chityal only from 30-1-1993 to 31-3-1994 and, therefore, he cannot be accused of having ignored the instructions issued from time to time and failed to scrutinise the hostel bills of the Wardens and Matrons, which enabled them to draw excess amounts for the period from 1-4-1991 to 31-3-1994. The disciplinary authority did not accept his explanation and issued order dated 23-6-2003 for appointment of Enquiry Officer.

The respondent challenged the charge sheet and the consequential proceedings in O.A No.3587 of 2004 primarily on the ground that there has been abnormal delay in the initiation of departmental enquiry.

In the counter filed on behalf of the petitioners herein, the delay was sought to be explained by making the following averments:

a) that large number of employees were involved in drawal of excess amounts and on receipt of the report of preliminary enquiry conducted by the Joint Director (Vigilance) in the office of the Commissioner of Social Welfare, 32 Wardens/Matrons of different Social Welfare Hostels were

placed under suspension pending finalization of disciplinary proceedings and charges were framed against them along with Assistant Social Welfare Officers;

b) that after receipt of their explanations, the Assistant Director (Legal Cell) was appointed as common Enquiry Officer under Rule 24(1) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the Rules') and on receipt of the enquiry report, final orders were passed against the delinquents;

c) that while reviewing the disciplinary cases against the Wardens/Matrons and Assistant Social Welfare Officers of Warangal District, it was observed that the delinquents could not have been punished on the basis of the report of preliminary enquiry and the State Government issued memo dated 13-10-1997 under Rule 41 of the Rules and accorded permission to reopen the cases and make fresh enquiry except in the case of Sri S. Venkat Reddy, Warden, Social Welfare Boys Hostel, Nachinappally, Warrangal District, who had been dismissed from service;

d) that vide G.O.Rt.No.46, Social Welfare (Ser.I.1) Department, dated 3-2-1998, the government ordered special audit of the remaining hostels in Warangal District for the years 1991-92 to 1993-94 and the report of special audit was made basis for issue of charge sheet to one Superintendent, four Assistant Social Welfare Officers and 73 Wardens/Matrons;

e) that enquiry was initiated against the respondent on the charge of having failed to comply with the departmental instructions and scrutinise the bills, which enabled Sri K. Rajamouli, who worked from 1-4-1991 to October, 1991, to draw excess amount of Rs.64,135/-;

f) that the special audit reports for the period from 1991-92 to 1993-94 revealed that due to his supervisory negligence,

excess amount to the tune of Rs.4,15,400/- was drawn by Sri E. Rathnam, Warden, Social Welfare Boys Hostel, Azamnagar.

The Tribunal noted that the allegation levelled against the applicant (the respondent herein) was only of supervisory negligence and quashed the proceedings by observing that delay in the initiation of enquiry had prejudiced his cause. For taking this view, the Tribunal relied on the judgments of the Supreme Court in **State of A.P. v. N. Radhakishan**[1] and **P.V. Mahadevan v. M.D. Tamil Nadu Housing Board**[2].

Learned Government Pleader for Services-II argued that delay in the initiation cannot, by itself, justify quashing of the proceedings of departmental enquiry and the Tribunal committed an error by assuming that the case of the respondent had been prejudiced on account of the time gap of more than three years in the initiation of proceedings after receipt of the audit report. He submitted that even though the respondent has been charged with the allegation of supervisory negligence only, the annulment of the enquiry initiated against him would adversely affect the proceedings which are pending against the persons who have been accused of drawing excess amount.

We have considered the submissions of the learned counsel, but have not felt persuaded to interfere with the order under challenge. The petitioners have not challenged the order of the Tribunal on the ground of lack of jurisdiction or violation of the rules of natural justice. Therefore, the only issue which requires consideration is whether the impugned order suffers from an error of law apparent on the face of the record.

An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal

or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

We may now advert to the order under challenge. A perusal thereof shows that the Tribunal took notice of the fact that the authorities had conducted a preliminary enquiry and audit and observed that if the respondents (the petitioners herein) were vigilant enough, they could have issued charge memo by conducting thorough audit way back in the year 1994. However, on account of their lethargy, the enquiry was initiated after a gap of 13 years and it will not be possible for the applicant to recapitulate memory at this point of time. The Tribunal further observed that no plausible explanation has been given for the delay of four years between the receipt of special audit report and the issue of charge memo and quashed the proceedings by observing that similar order had been passed in the case Smt. B. Savitri in O.A.No.7142 of 2002.

In our opinion, even though the Tribunal's observation regarding the total delay of 13 years in the initiation of enquiry against the respondent is apparently erroneous because the total time gap between the period during which the respondent remained posted as

Assistant Social Welfare Officer, Chityal and the initiation of enquiry was eight years and six months, the final conclusion recorded by it does not deserve to be disturbed because the petitioners have failed to show that the order under challenge suffers from an error of law apparent on the face of the record. It can reasonably be presumed that during the long time gap of 8½ years, the employees who remained posted at Chityal during the respondent's tenure as Assistant Social Welfare Officer must have been transferred to more than one places. The availability of the relevant record is also extremely doubtful. That apart, at this stage, the respondent cannot be expected to memorise everything and defend himself. Therefore, the Tribunal cannot be faulted when it opined that delay in the initiation of enquiry has prejudiced the cause/defence of the applicant.

In **N. Radhakishan**'s case (supra), the Supreme Court emphasised the need for maintaining a balance between the purity of administration and prejudice which is likely to be caused to an employee on account of abnormal delay in the initiation of enquiry and held:

> "It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the

disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

The Supreme then adverted to the facts of that case and held that the Tribunal had rightly quashed the proceedings of enquiry on the ground of delay. Paragraph 20 of the judgment, which contains the reasoning of the Supreme Court, reads as under:

"In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularising the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any enquiry officer even assuming that action was validly being initiated under the 1991 Rules. There is no explanation whatsoever for delay in concluding the enquiry proceedings all these years. The case depended on records of the Department only and the Director General, Anti-Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Enquiry Officers who had been appointed one after the other had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that the respondent at any stage tried to obstruct or delay the enquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated 31-7-1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos

dated 27-10-1995 and 1-6-1996. The Tribunal rightly did not quash these two latter memos."

In **P.V. Mahadevan**'s case (supra), the Supreme Court adopted the ratio of **N. Radhakishan**'s case (supra) and held that delay of ten years in the initiation of enquiry was unreasonable. Their Lordships noted that the enquiry was based on the audit report and held that the same cannot be treated sufficient for initiation of enquiry after a gap of ten years. Paragraphs 10 and 11 of that judgment, which contain the discussion on the issue of delay and likely prejudice to the cause of an employee on account of delayed initiation of enquiry, are extracted below:

> "10. Section 118 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 relates to annual audit of accounts. These two statutory provisions have not been complied with at all. In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in 1994-95. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17 of 1961. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr R. Venkataramani, learned Senior Counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay.
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> 11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted

disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

In **M.V. Bijlani v. Union of India**[3], the Supreme Court quashed the order of punishment on the ground of six years delay in the initiation of enquiry and seven years delay in conduct thereof. For the sake of reference, paragraphs 15, 16, 17 and 19, which reflect consideration of the factual and legal matrix of the case by the Supreme Court, are reproduced below:

"15. It will bear repetition to state that the charges which were framed related to only non-maintenance of ACE-8 Register and non-supervision of working of the line. In the absence of any charge that he had in fact misappropriated copper wire for his own benefit out of the disposal thereof, the question as regards purported misconduct by way of misutilisation of 4000 kg of copper wire could not have been gone into. Furthermore, it has not been shown that ACE-8 Register was required to be maintained in an appropriate form or in a particular manner i.e. in bound form or in loose sheets.

16. So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order stated that the appellant was not required to prepare ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as

also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

17. In **State of M.P. v. Bani Singh** [1990 Supp SCC 738], this Court has clearly held: (SCC p.740, para 4):

"The irregularities which were the subject-matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

19. It is really a matter of great surprise that a disciplinary proceeding was initiated five years after the appellant handed over charge. At that time he was admittedly not having possession of any documents. The enquiry officer furthermore took a period of seven years to complete the enquiry. The Appellate Authority also took seven years in disposing of the appeal. Even then, the Appellate Authority did not go into the question as to whether the procedures laid down for holding the disciplinary proceedings had been followed or not. He did not go into the contentions of the appellant herein minutely. The memo of appeal filed by the appellant was very elaborate. He raised a number of contentions therein. The enquiry officer was charged with bias. He was also charged with unfair conduct. He was said to have committed a large number of irregularities in the departmental proceeding. The memo of appeal of the appellant was in about 65 typed pages. It was subdivided into five parts. He made all endeavours to deal with each and every finding of the enquiry officer and dealt with almost all the documents relied upon by the department. He also dealt with the deposition of the witnesses examined on behalf of the parties."

If the legal position emerging from the above noted judgments of the Supreme Court is applied to the respondent's case, we do not find

any difficulty in approving the view taken by the Tribunal. It is neither the pleaded case of the petitioners nor the learned Government Pleader argued that the respondent had been charged with the allegation of misappropriation, fraud, cheating or embezzlement of public funds. Rather, it is an admitted case that the allegation levelled against him related to the alleged supervisory negligence. Therefore, the delay of 8½ years could certainly be treated fatal to his defence. During this long time gap, the evidence which could justify exercise of due care and caution by the respondent in the discharge of his function as a supervising officer must have been lost.

In the premise aforesaid, we hold that the order under challenge does not suffer from any legal infirmity warranting interference under Article 226 of the Constitution and the writ petition is liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the writ petition, WPMP.No. 25762 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, C.J.

September 20, 2007

C.V. NAGARJUNA REDDY, J.

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[1] (1998) 4 SCC 154
[2] (2005) 6 SCC 636
[3] (2006) 5 SCC 88